

6 Official Opinions of the Compliance Board 203 (2009)

Minutes – Failure to produce minutes following meeting violated Act

Minutes – Public Access – Posting on website not required

Compliance Board – Response to Complaint – Public body's failure to respond in timely manner violated Act

December 7, 2009

Gregory S. Brady

The Open Meetings Compliance Board has considered your complaint that the Sport Fish Advisory Commission and Tidal Fish Advisory Commission of the Department of Natural Resources have violated the Open Meetings Act by routinely failing to make copies of minutes available to the public.

For the reasons explained below, we find that the failure to post copies of minutes on a website did not violate the Open Meetings Act. However, the acknowledged failure to produce adequate minutes following certain meetings violated the Act. Furthermore, the failure of the commissions to respond to the complaint in a timely manner violated the Act.

I

Complaint and Response

According to the complaint, the Sport Fish Advisory Commission and Tidal Fish Advisory Commission have repeatedly failed to make the minutes of their meetings available to the public for years. The complaint indicated that you have asked a Department of Natural Resources staff member “for years to get the websites up to date and post the meetings minutes for the public to view.” The complaint indicated that, as of April 25, 2009, minutes had not been posted on the website since March 2008. However, the complaint acknowledged that a summary of a joint commission meeting held February 2009 was available online. The complaint indicated that each commission typically meets six times a year and that the commissions meet jointly several times a year.

Martin Gary of the Fisheries Service, Department of Natural Resources, responded on behalf of both commissions. He indicated that “the concerns ...

were justified, and [DNR staff] have addressed them to make sure the meeting summaries will be available in a timely and through fashion.” An internal e-mail communication attached to the response noted that, at the time of the complainant’s original request for online access to minutes, the Fisheries Services lacked the necessary resources to “create complete and thorough minutes of ... Commission meetings.” Audio recordings were made and staff would produce meeting summaries, not formal minutes. However, in light of the complainant’s request, the Fisheries Service has taken specific actions. In July 2009, new operational guidelines were approved to require the Department to produce “draft summaries” within 10 working days of each meeting for review by the commissioners. Those summaries would be approved at the next meeting and then posted on the website. In September 2009, the guidelines were modified to require “verbatim transcripts of each meeting” beginning with a joint meeting in October 2009.

According to the response, summaries of prior meetings dating back to January 2008 have been reviewed and some have been posted. However, some of the summaries are “functionally incomplete” and have not been posted. If they were posted, it would be necessary to qualify the posting that the document is incomplete.

A copy of the Maryland Sport and Tidal Fisheries Advisory Commissions Operating Guidelines was also submitted.

II

Analysis

Minutes

When public bodies such as the commissions conduct meetings that are governed by the Open Meetings Act, they must generate minutes of those meetings: “As soon as practicable after a public body meets, it shall have written minutes of its session prepared.” §10-509(b).¹ Absent special circumstances, we have advised that minutes are to be available on a cycle paralleling a public body’s meetings. *See, e.g., 6 OMCB Opinions* 164, 169 (2009). While a temporary staff shortage might justify a brief delay, resource constraints do not excuse a public body’s obligation under the Act to produce minutes. To constitute minutes of the public body, approval by the body is required. *6 OMCB Opinions* 187, 191 (2009).

¹All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

The minutes of a meeting must reflect each item considered, any action that the public body took on the item, and every recorded vote. §10-509(c)(1). We have previously advised that each item considered is to be described in sufficient detail so that a member of the public who reviews the minutes can gain an appreciation of the issue under discussion. 6 *OMCB Opinions* 164, 169 (2009). A transcript is not required. However, a transcript would likely reflect the information required by the Act. *Id.* While a public body may record its meetings, a recording does not satisfy the obligation to produce written minutes. *Id.*

The Act makes clear that minutes of a public meeting governed by the Act are public records, open to inspection during ordinary business hours. §10-509(d). Many public bodies now post minutes on a website, a practice we commend. However, there is no requirement under the Open Meetings Act that a public body make a copy its minutes available online.

Given the acknowledgments in the response, it is clear the commissions have not consistently complied with requirements of the Act in terms of producing minutes following their meetings. To the extent the commissions have not done so, the Act was violated. Given the acknowledgments and the change in policy, little would be added by a review of the summaries of individual meetings to determine whether or not they satisfied the minimal requirements of the Act. Although minutes are not usually in the form of a transcript, if the required information is present, the commissions' decision to produce transcripts of their meetings will satisfy the Act. However, a public body's failure to post a copy of minutes on a website in itself does not violate the Act.

Response Time

The complaint was initially forwarded to the chairs of the commissions on May 4, 2009, in care of the Department of Natural Resources. Under §10-502.5(c)(2)(i), a public body is required to file a written response to a complaint within 30 days of its receipt. Only after multiple requests to the Department of Natural Resources did we receive a response dated October 15, 2009. The commissions failure to respond to the complaint in a timely manner violated the Act. 5 *OMCB Opinions* 1, 4 (2006).

III

Conclusion

The failure to post copies of minutes on a website did not violate the Open Meetings Act. However, the acknowledged failure to produce adequate minutes following certain meetings violated the Act. Furthermore, the failure of the commissions to respond to the complaint in a timely manner violated the Act.

OPEN MEETINGS COMPLIANCE BOARD

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